TOPICAL INDEX

	Page
Petition for Writ of Certiorari	1
Opinions Below	2
Jurisdiction	3
Statement	3
Facts	3
Decisions Below	6
Questions Presented	8
Reasons for Granting the Writ	9
1. For the same reason that this court granted Certiorari in Parker v. County of Los Angeles, 338 U.S. 327	9
2. The decision below is contrary to Wieman v. Updegraff	9, 10
Wieman v. Updegraff, ___ U.S. ___, 97 L. ed. (adv. op.) 162 is violated by the decision of the court below	10
On its face, Part B of the Los Angeles County Affidavit offends the Wieman case	10
The Interpretation by the Court Below that Intent was an element of the affidavit does not take the case out of the principle of Wieman v. Updegraff	12
The Affidavit Offends Article I, Sec. 10(1) of the United States Constitution	19

TABLE OF AUTHORITIES CITED

CASES — Page

A.B.Small Co. v. American Sugar Refining Co., 267 U.S. 213 — 19

ACA v. Douds, 339 U.S. 382 — 6, 20

Adler v. Bd. of Education, 342 U.S. 485 — 19

Bailey v. Richardson, 182 Fed. 2d 46 — 6

Cline v. Frink Dairy Co., 274 U.S. 445 — 19

Collins v. Kentucky, 234 U.S. 634 — 19

Connally v. General Construction Co., 269 US. 385 — 15, 19

Cummings v. Missouri, 4 Wall (U.S.) 277 — 20

DeJonge v. Oregon, 299 U.S. 353 — 16

Garland, Ex Parte, 4 Wall (U.S.) 333 — 20

Garner v. Board of Public Works, 341 U.S. 716 — 19

Gerende v. Board of Supervisors, 341 U.S. 56 — 19

James v. Bowman, 190 U.S. 127 — 19

Lanzetta v. New Jersey, 306 U.S. 451 — 19

L'hommedieu v. Bd. of Regents, 95 N.Y.S. 2d 443 — 6

M. Kraus & Bros. v. U.S. 327 U.S. 614 — 19

Parker v. County of Los Angeles, 338 U.S. 327 — 4, 9, 21

Pockman v. Leonard, 39 Cal. 2d 676, 249 P. 2d 267 — 7

Steiner v. Darby, 88 Cal App 2d 481 — 6

U.S. v. Cohen Grocery Co., 255 U.S. 81 — 19

U.S. v. Lovett, 328 U.S. 303 — 20

U.S. v. Reese, 92 U.S. 214 — 19

TABLE OF AUTHORITIES CITED

CASES	Page
Wieman v. Updegraff, ___ U.S. ___, 97 L.ed. (adv. op.) 162	7, 10, 16, 17, 18, 21

STATUTES

	Page
28 USC 1257(3) and 2101(c)	3
United States Constitution, Art. I, Section 10(1)	19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. _____

RICHARD W. PETHERBRIDGE,

Petitioner,

v.

COUNTY OF LOS ANGELES, CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and each of them, as members of the Los Angeles County Civil Service Commission; CLIFFORD AMSDEN, as Secretary and Chief Examiner of said Commission; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD and ROGER W. JESSUP, and each of them, as members of the Los Angeles County Board of Supervisors; WAYNE ALLEN, as Chief Administrative Officer of said County; HAROLD W. KENNEDY, as County Counsel of said County; EUGENE W. BISCAILUZ, as Sheriff of said County; BENJAMIN S. HITE, as Registrar of Voters of said County; ARTHUR J. WILL, as Superintendent of Charities of said County; KATHRYN MOUNTFORD, as Superintendent of the Telephone Department of said County and DAVID BOGEN, as Executive Secretary of the County Probation Committee of said County.

PETITION FOR WRIT OF CERTIORARI

TO THE CALIFORNIA SUPREME COURT

Petitioner prays that a Writ of Certiorari issue to review the decision and judgment of the California Supreme Court entered on October 17, 1952 (Opinion 1),[1/]

1/ This is a petition in forma pauperis. The record, there-

affirming the judgment of the Superior Court of the State of California in and for the County of Los Angeles, entered June 27, 1950 (Clk's Tr. 55) upholding the validity of the discharge of petitioner and others for failure to sign the so-called Los Angeles County Loyalty Oath and denying a petition for writ of mandate for reinstatement.

OPINIONS BELOW

The opinion of the Superior Court (Cl. Tr. 60) is not reported. The opinion of the intermediate appellate court, the Second District Court of Appeal, may be found at 231 P. 2d 140.2/ The opinion of the court below, one justice dissenting, appears separately in the record and is reported at 39 Cal. 2d 698, 249 P. 2d 287. The lower court's opinion on denial of petition for rehearing, one justice dissenting, appears separately in the record and is reported at 39 Cal. 2d 703, 250 P. 2d 145. The court denied a subsequently filed Petition for Recall of Remittitur, without opinion.

(1/ cont.) for, is not yet printed, but consists of the formal documents before the California Supreme Court and certified by the Clerk of that Court. References to the various documents will be made by referring to the documents themselves and the pages therein.

2/ Under California Procedure, when the State Supreme Court grants a hearing of a case decided on appeal by the District Court of Appeal, the opinion of the District Court of Appeal becomes functus officio and is not reported in the official bound reports.

JURISDICTION

The judgment of the California Supreme Court was entered October 17, 1952 (Opinion, 1). That court denied re-hearing on November 14, 1952.(Opinion Denying Re-hearing, 1). On February 11, 1953, Justice Clark, of this court, extended the time within which this petition may be filed to and including April 13, 1953. (Order of said date). On February 16, 1953, the court below, one justice dissenting, denied petitioner's petition to recall remittitur and for reconsideration. (Order dated Feb. 16, 1953).

The constitutional issues here presented were urged in the trial court, (Cl. Tr. 12-14, 18) considered by it where they were overruled; (Cl. Tr. 60-67) they were urged before and considered by the District Court of Appeal where they were also overruled; (231 P. 2d 140) and they were urged before the court below, (Opinion, Petition for Rehearing, Petition for Recall of Remittitur) where they were likewise overruled, one Justice dissenting. (Opinion, Opinion on Denial of Rehearing, Order dated Feb. 16, 1953, denying petition for recall of remittitur).

The jurisdiction of this court is invoked under 28 USC 1257(3) and 2101(c).

STATEMENT

Facts -- With two additions, the facts in this case are substantially the same as those previously before this court

in Parker v. County of Los Angeles, 338 U.S. 327. (Nos. 49 and 50, Oct. Term, 1949). In that case this court, after granting the petitions for writs of certiorari and after argument dismissed the petitions because the constitutional questions were "not ripe for decision". (338 U.S. at 333).

The two additional facts are these:

(1) Petitioner has been discharged for failure to sign the affidavit, the absence of certainly of this fact being the basis for this court's action in the Parker case (338 U.S. at 330);

(2) Part B of the affidavit required by the County of Los Angeles had had added to it, in the interim, a clause which was not present in the record in the Parker case (Cf. Record Before Civil Service Commission 14 with Ibid 30). This addition is set out in footnote 8, infra, pg. 10.

In sum, the facts are these:

Petitioner, a permanent civil service employee of Los Angeles County, (Cl. Tr. 4, 8) was discharged solely by reason of the fact that he refused to sign, on constitutional grounds (Record Before Civil Service Commission 4, 5) the oath and affidavit required by the County as a condition of employment subsequent to petitioner's having become such a permanent civil service employee (Cl. Tr. 4,7).

All administrative remedies were exhausted by petitioner seeking reinstatement (cl. Tr. 10), upon denial of which (Cl. Tr. 11), these court proceedings were

instituted. (Cl. Tr. 1, et seq.).

As indicated by the court below (Opinion, 6) the heart of this case lies at the consideration as to whether or not the requirement, as a condition of employment, of Part B of the oath, the so-called Affidavit re Subversive Activities, is constitutional.[3/]

Part B is as follows:

"B. AFFIDAVIT RE SUBVERSIVE ACTIVITY.

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States or State of California, or County of Los Angeles, by force or violence, except those specified as follows: _____ (the organizations here to be listed embrace all organizations advocating the overthrow of government by force or violence including any of the hereinafter named if they should ever

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3/ This, because petitioner never objected to Part A and C (Record Before Civil Service Commission, 4 & 5), and petitioner was not discharged for failure to sign Part D (Opinion 5 & 6). In a sense this would make the instant case different from Parker in a third way, for here the validity of Part B is involved while there, the validity of Part D was involved. But, since Part B now specifically incorporates Part D as a part of it, there is no substantial difference, save, of course, for the additional language in parenthesis in Part B which renders the affidavit uncertain.

be determined by a court of law to advocate the overthrow of government by force or violence); and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.[4/]

Decisions Below -- The trial court (Cl. Tr. 60) upheld the affidavit on the ground that public employees must be loyal to the government and that the requirement of the affidavit does not violate any of petitioner's rights. That court relied upon the decision of the California District Court of Appeal in the Parker case (Steiner v. Darby, 88 Cal. App. 2d 481, the decision of the Court of Appeals for the District of Columbia in Bailey v. Richardson, 182 F. 2d 46, this court's decision in ACA v. Douds, 339 U.S. 382, and the decision of the Supreme Court of New York in L'hommedieu v. Board of Regents, 95 N.Y.S. 2d. 443.

Thus it is to be noted that the trial court did not interpret the affidavit as requiring scienter.

4/ For the convenience of the Court, the whole of the oath and affidavit is set out hereinafter as Appendix A. It appears in the record at Record Before Civil Service Commission, pp. 29-37.

The court below in its first opinion held that the affidavit did not violate Federal constitutional protections and that it was within its own decision in Pockman v. Leonard 39 Cal. 2d 676 (Opinion, 6). And that court further held that the affidavit must be interpreted as requiring scienter on the part of the affidavit signer (Opinion, 7).

There was a vigorous dissent by Justice Carter (Opinion) in which he referred to his dissent in Pockman v. Leonard, 39 Cal. 2d 676, 688, 249 P. 2d 267, before this court as No. , this term.

Though urged in the petition for re-hearing (Petition for Re-hearing, 2-15) that this interpretation by the Supreme Court of California as requiring scienter was an after the fact interpretation which was contrary to the interpretation given by the parties at the time of the requirment for the signing of the affidavit and that therefore petitioner was being deprived of due process, the court below ignored the argument. In its Opinion on Denial of Re-hearing, the Court touched on other points urged by petitioner but did not mention the scienter question.

Following this court's ruling in Wieman v. Updegraff _ U.S._ , 97 L.ed. (adv. op.) 162, petitioner again urged the court that by not allowing him to execute the affidavit as interpreted, he was being denied due process. (Petition for Recall of Remittitur; Reply to Points and Authorities in Opposition to Recall of Remittitur). The

court denied this petition without opinion, one justice dissenting.

QUESTIONS PRESENTED

1. Was petitioner deprived of due process of law when he was not permitted an opportunity to sign Part B of the Los Angeles County Loyalty Oath and Affidavit after the State Supreme Court had, for the first time, interpreted the affidavit as requiring scienter?
2. Does Part B of the Los Angeles County Loyalty Oath and Affidavit violate the freedom of speech, press, religion, thought, association, assembly, privacy of conscience guarantees of the 1st and 14th Amendments to the United States Constitution?
3. Does Part B of said Oath and Affidavit violate the Bill of Attainder and Ex Post Facto prohibitions of Article I, Sec 10(1) of the United States Constitution?
4. Does Part B of said Oath and Affidavit violate the Due Process Clause of the 14th Amendment because it is too vague, indefinite and uncertain?

REASONS FOR GRANTING THE WRIT

1. The same important considerations which caused this court to grant certiorari in Parker and Steiner v. County of Los Angeles, 338 U.S. 327 are still present here. In that case this court felt the matter was prematurely before it because there was no certainty that anyone would be discharged by a refusal to sign the affidavit. That doubt is not present here. Petitioner has been discharged. The discharge has been upheld by the State courts. Relief from this court is his sole remedy.

Nor is the matter one of concern to petitioner alone. At stake as well are the rights of all government employees (1/10th of the nation's employed population)[5], and specifically the rights of the thousands of public employees of Los Angeles County.

Though other cases before this court have considered oaths and affidavits involving organizations, no case has passed upon the question as to whether, as a condition of continuing employment, a public employee must disclose what newspapers or magazines he reads or has read[6], nor what religion he adheres to[7].

2. The requirement of Paragraph B on its face is

5/ Survey of Current Business, Department of Commerce, Bureau of Census.

6/ See Appendix A; e.g. Daily Worker, New Masses.

7/ See Appendix A; e.g. Humanist Society of Friends.

is directly contrary to the holding of this court in Wieman v. Updegraff, U.S. , 97 L.ed. (adv. op.) 162.

3. Wieman v. Updegraff, U.S. , 97 L.ed. (adv. op.) 162, is also violated by the refusal of the court below both on Petition for Re-hearing and on Petition for Recall of the Remittitur to allow petitioner to sign the affidavit as construed to require scienter.

I

WIEMAN v. UPDEGRAFF, ___ U.S. ___, 97 L. ed. (adv. op.) 162, IS VIOLATED BY THE DECISION OF THE COURT BELOW

A

On its face, Part B of the Los Angeles County Affidaivt Offends the Wieman case.

The first reading of the affidavit petitioner was required to sign as a condition of continued employment should make it clear that scienter, intent, knowledge on the part of petitioner was no part of the affidavit at all. Thus petitioner was required to guess which organizations, if any, of all the organizations to which he had belonged since December 7, 1941 a court subsequently thereto might determine advocated the overthrow of the government by force and violence.[8] That intent is not an element of this

8/ "(the organizations here to be listed embrace all organizations advocating the overthrow of government by force or violence including any of the hereinafter named if they should ever be determined by a court of law to advocate the overthrow of government by force or violence)"

affidavit is manifest. According to the very language used by the County, if petitioner fails to put down an organization, even though to his knowledge it did not so advocate, but a court later determines that it does, he has falsely sworn.

The County did not say to petitioner to put down, in the blank provided, only those organizations which to petitioner's knowledge advocated the overthrow of government by force and violence; he was told to put down organizations which a court later determined so advocated.

It cannot reasonably be argued, in the face of this clear language of the affidavit, that the element of intent is present. In so many words the element of intent is not present. The criterion is not whether petitioner had knowledge of the nature of the organization but rather a guess as to what some court in the future will do.9/

This being so, the principle of the Wieman case controls. In that case, this court said:

> "... Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process."

B

The Interpretation by the Court Below that Intent was an Element of the

9/ Concededly a prognostication not easy of making.

Affidavit does not take the case out of the Principle of Wieman v. Updegraff.

The court below held, in sustaining the affidavit, that (Opinion, 7 & 8):

> "... The quoted language, (see f.n. 4, supra) when properly construed, required plaintiffs to designate only those of the named organizations which they knew advocated overthrow of the government by force, or which to their knowledge had been held by a court to advocate such action. They were not required to speculate upon what the courts might determine in the future. As thus interpreted, the requirement was sufficiently certain to be understood and applied, and it must be sustained under our decision in Pockman v. Leonard, ante, p. 676 [249 P.2d 267], that public employees may properly be required to furnish information regarding their memberships in organizations which, to their knowledge, have advocated the overthrow of the government by force and violence." (Italics added)

But, (the reasonableness of the lower court's interpretation in the light of the plain language aside)[10/]

10/ It is interesting to note that a proposal by one of the

this interpretation does not save the situation. Precisely the same thing happened here as happened in the Wieman case.

Following the opinion of the court below in which scienter was added to the affidavit, petitioner filed his petition for re-hearing in which this question was specifically dealt with. In an 18 page petition for re-hearing, 13 pages (pgs. 2-15) were devoted to that phase of the lower court's opinion which had construed the affidavit to require knowledge. In that petition for re-hearing, petitioner pointed out (Pg. 2 of Petition for Re-hearing):

> "... that the oath sustained after such delimiting construction is in no fair sense or measure the oath which was refused. It was paragraph B before construction which

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(10/ cont.) members of the Board of Supervisors to eliminate Part D of the oath and affidavit because the element of scienter was missing, was turned down by the Board (Record Before Civil Service Commission, 79). In speaking of the organizations listed in Part D, the Supervisor said (Ibid, 76):

> "... I do believe that in organizations like that (AFL) they would completely support this program of the County if they felt that some of their members who might have innocently in past years have joined an organization which is now deemed subversive, that if they didn't have to be inquired into as to their past affiliations they would feel it would be a much more American program." (Italics added).

But this plea that the innocent might suffer did not affect the Board of Supervisors. In other words, the Board indicated that knowledge played no part in its program. Nevertheless the court below construed the affidavit as requiring scienter.

petitioners declined in 1948 upon claim of their constitutional rights to execute. It comports neither with law nor with reason to sustain their discharge for refusal to sign that oath in 1948 upon the assertion now that another and different oath, birthed now by limiting and confining construction of the original unqualified language, can be measured within the constitutional power of the County."

And petitioner further pointed out to the court below (Pet. for Rehearing, pp. 7 & 8):

"In its decision this Court has endeavored to cure the vagueness and the want of reasonable standards in the language of the oath required by paragraph B of the July 20, 1948, order by confining and containing the same through construction. ...

"The difficulty is that the oath required by paragraph B's terms and language in 1948 when petitioners refused its execution was not 'as thus interpreted'. Though the construction now placed on its terms by the Court may be an admissible interpretation and for the future may serve to legally confine the oath's scope to the limits now

established, nonetheless the fact can not be gainsaid that when petitioners were put to signature of the oath in 1948 its terms were not so confined or interpreted.

"Petitioners in 1948 did not read the oath as the Court now would limit it. They rejected it because on its face in 1948 they conscientiously conceived it required them to do what its terms said, list in their disclosures any of the named organizations which they might foresee at their peril 'should ever be determined by a court of law to advocate the overthrow of government by force or violence.' In so reading the oath they can hardly be disapproved of or penalized since it can not be denied that the original language of the oath lent itself at least as well to broad interpretation as to the interpretation now fixed upon it by the Court. As stated in Connally v. General Construction Co., 269 U.S. 385, 393, it offends the Constitution to permit enforcement after-the-fact of a statute possessed 'of such a double meaning that the citizen may act upon the one conception of its requirements, and the courts upon another.'"

Finally, as a concluding argument, petitioner pointed out to the court below (Pet. for Rehearing, 15):

> "... that the oath construed and sustained is not the oath refused. Petitioners' discharge has been upheld for refusal to take an oath in no fair sense or measure akin to the oath put to them in 1948. Applicable in such premises is the sharp comment in DeJonge v. Oregon, 299 U.S. 353, 362, 'Conviction upon a charge not made would be sheer denial of due process.'"

In other words, petitioner called to the lower court's attention that the affidavit as the court had construed it was a different affidavit from that which petitioner had, for valid constitutional reasons, (Wieman v. Updegraff, supra) refused to sign. And while petitioner did not, at this stage of the proceedings, suggest to the court in precise words that he should be afforded the opportunity to sign the affidavit as now construed,[11/] in effect petitioner had done just that. The effect of petitioner's argument in his Petition for Rehearing was this: (1) The affidavit as now construed is different from the one I refused to sign. Accordingly my discharge for failing to sign a different oath should not be upheld, or (2) Since

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11/ Perhaps because the Court below had stated (Opinion, 6, f.n.) that by reason of preempting state law, the county affidavit could not longer be required.

the affidavit I refused to sign and the affidavit as now construed by the court are two different things, I ought to be given an opportunity to take the affidavit as now construed.

In its opinion denying rehearing the court below did not comment on this crucial phase of the case.

In the Wieman case almost the identical situation occurred. In that case the Supreme Court of Oklahoma interpreted an oath of that state as "limiting the organizations proscribed by the Act to those designated on the list or lists of the Attorney General which had been issued prior to the effective date of the Act." (___ U.S. ___, 97 L.ed. (adv. op.) at 165). In that case, the petitioners in their petition for re-hearing suggested to the Oklahoma Supreme Court that refusal of that court to permit them to take the oath as now interpreted violated due process. In that case, as here, the court below denied re-hearing.

Based on this set of facts, this court said (97 L.ed. (adv. op.) at 166):

> "... This must be viewed as a holding that knowledge is not a factor under the Oklahoma statute..."

And it, therefore, held the Oklahoma oath invalid.

Following this court's decision in the Wieman case just discussed, petitioner called the decision to the attention of the court below. Petitioner filed with that

court a Petition for Recall of Remittitur and for Reconsideration. In that petition (pg. 2 & 3) petitioner called to the lower court's attention these words from this court's decision in the Wieman case:

> "We assumed in Garner, that if our interpretation of the oath as containing an implicit scienter requirement was correct, Los Angeles would give the petitioners who had refused to sign the oath an opportunity to take it as interpreted and resume their employment. But here, with our decision in Garner before it, the Oklahoma Supreme Court refused to extend to appellants an opportunity to take the oath. ..."

And petitioner specifically pointed out to the court below (Petition for Recall, pg. 3) that without giving him an opportunity to sign the affidavit as construed, his rights to due process were being violated.

The court denied the petition without opinion (Order dated Feb. 16, 1953), on justice being of the opinion that the petition should be granted.

Accordingly, it avails nothing that the court below said that intent was a part of the affidavit, just as it availed nothing that the Oklahoma Supreme Court said that the oath only referred to the Attorney General's list. The actual effect of what the lower court did, or rather failed

to do, in fact, was to deprive petitioner of due process of law. The case here is precisely the same as Wieman.[12/]

II

THE AFFIDAVIT OFFENDS ARTICLE I, SEC. 10(1) OF THE UNITED STATES CONSTITUTION

In Garner v. Board of Public Works, 341 U.S. 716, this court made it very clear that the reason it was upholding the retroactive features of the Los Angeles City Ordinance was the presence of the Los Angeles City Charter

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12/ The construction by the court below, that the affidavit requires intent, only serves to emphasize the invalidity of the affidavit on its face contrary to the due process clause of the 14th Amendment because of vagueness. (See Questions Presented No. 4, supra). This construction was absolutely essential in order to avoid the clear effect of cases, such as Lanzetta v. New Jersey, 306 U.S. 451, 453; Connally v. General Construction Co., 269 U.S. 385, 391; M. Kraus & Bros. v. U.S., 327 U.S. 614, 621-2; Cline v. Frink Dairy Co., 274 U.S. 445, 458; James v. Bowman, 190 U.S. 127, 142; Collins v. Kentucky, 234 U.S. 634, 638; U.S. v. Cohen Grocery Co., 255 U.S. 81, 88; A.B.Small Co. v. American Sugar Refining Co., 267 U.S. 233, 239; U.S. v. Reese, 92 U.S. 214, 219, which hold that debilitating statutes which afford no standard of conduct or where standards are conjectural or vague so as to really provide no standards at all, are unconstitutional. Admittedly there could be no vaguer standard than a requirement that petitioner guess what a court will do in the future.

The intent construction by the court below was also necessary, constitutionally, because of the admonition of this court in Garner v. Board of Public Works, 341 U.S. 716, 723; Adler v. Bd. of Education, 342 U.S. 485, 494; and Gerende v. Bd. of Supervisors, 341 U.S. 56, 57 (all decided after petitioner was discharged) that in cases such as these knowledge was an essential ingredient to save the affidavit from infirmity. The lower court's construction was not based upon any facts in the record and is contrary to the clear language of the affidavit.

provision which had, prior to the time the oath features took effect, prohibited city employment to persons on the same ground as the oath requirement. Said this court (341 U.S. at 721):

> "... The activity covered by the oath had been proscribed by the Charter in the same terms, for the same purpose, and to the same effect over seven years before, and two years prior to the period embraced in the oath. Not the law but the fact was posterior."

But no such saving provision is present in the case at bar. Here there is no charter provision in effect prior to the promulgation of the County's affidavit requirement, nor was there any "posterior fact" at work. Here County employees are being punished today on the basis of lawful conduct of the past.[13/]

That discharge under such circumstances is punishment has again been recognized by this court only this term.

13/ Cf. ACA v. Douds, 339 U.S. 382, 413, wherein this court distinguished U.S. v. Lovett, 328 U.S. 303; Ex Parte Garland, 4 Wall (U.S.) 333; and Cummings v. Missouri, 4 Wall (U.S.) 277 specifically on the ground that in the cases cited the individuals involved were in fact being punished for past actions, but that in the Douds case "they are subject to loss of position only because there is substantial ground for the congressional judgment that their beliefs and loyalties will be transferred into future conduct." Thus the Douds case recognized that in a case such as the case at bar, the Lovett, Garland and Cummings cases control.

In the Wieman case, this court said (97 L.ed. (adv. op.) at 166, 167):

> "There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy.' ..."

C O N C L U S I O N

This court in granting certiorari in the Parker case (337 U.S. 929) obviously considered the issues raised important and fundamental. Otherwise the writ would not have been granted. In dismissing the writ after argument, this court did so because it was not clear that County employees who refused to file the affidavit might be discharged (338 U.S. at 329, 330). At that time this court knew of the pendency before the Superior Court in California of petitioner's instant case.[14] And this court then said:

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[14] "... On June 24 of this year these sixteen discharged employees sought a writ of mandate from the Superior Court of the County of Los Angeles to review the decision of the Civil Service Commission, with a prayer for reinstatement and back pay. We are advised that this litigation is now pending in the Superior Court. ..."

"... It will be time enough for the petitioners to urge denial of a Federal right after the State courts have definitively denied their claims under State law."

Petitioner's claims under State law have now been definitively denied. He urges here, therefore, pursuant to this court's directive in Parker, his denial of Federal right.

The Petition for Writ of Certiorari to the California Supreme Court should therefore be granted.

Respectfully submitted,

A. L. WIRIN

FRED OKRAND

Attorneys for Petitioner

APPENDIX A

LOS ANGELES COUNTY OATH AND AFFIDAVIT

OATH AND AFFIDAVIT

Department .....

A. OATH OF OFFICE OR EMPLOYMENT

I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States or State of California, or County of Los Angeles, by force or violence, except those specified as follows:

.....

(the organizations here to be listed embrace all organizations advocating the overthrow of government by force or violence including any of the hereinafter named if they should ever be determined by a court of law to advocate the overthrow of government by force or violence); and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

D. MEMBERSHIP IN ORGANIZATIONS

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

NAME

Abraham Lincoln Brigade.

Academic and Civil Rights Council of California.

After School Clubs.

	NAME
2	Agitprop.
3	American Artists Congress.
4	America for Americans.
5	American Comm. for a Free Indonesia.
6	American Comm. for Democracy and Intellectual Freedom.
7	American Comm. for Protection of the Foreign Born.
8	American Comm. to save Refugees.
9	Americans Communications Assn.
10	American Communist Party.
11	American Council on Soviet Relations.
12	American Federation for Political Unity.
13	American Friends of the Chinese People.
14	American Guard.
15	American League Against War and Fascism.
16	American League for Peace and Democracy.
17	American League of Christian Women.
18	American Peace Mobilization.
19	American Russian Institute.
20	American Society for Technical Aid for Spain.
21	American Student Union.
22	American Writers Congress.
23	American Youth Congress.
24	American Writers School.
25	American Youth for Democracy.
26	Anti-Axis Comm.

Anti-Hearst Examiner.
Anti-Nazi League.
Anti-Nazi League of Hollywood.
Anti-ROTC Committee.
Arcos Limited.
Artist Front to Win the War.
Arts Advisory Council.
Authors League.
Ballila.
Bay Area Council Against Discrimination.
California Conference for Democratic Action.
California Labor School.
California Youth Legislature.
Centro Anti-Communists.
China Aid Council of American League for Peace and Democracy.
Citizens Committee for Better Education.
Citizens Comm. for Defense of Mexican-American Youth.
Citizens Comm. to Free Earl Browder.
Citizens Comm. to Support Labors Right.
Citizens No Foreign Wars Coalition.
Civil Rights Congress.
Civil Rights Council for Northern California.
Comintern.
Comm. for Boycott Against Japanese Aggression.
Comm. for Defense of Mexican-American Youth.
Comm. for Support of S. W. Garson.

Comm. Protesting Attacks Against the Abraham Lincoln Brigade.

Comm. to Defend America by Keeping Out of War.

Communist International.

Communist Party's Little Theatre.

Communist Workers School.

Communist Political Assn.

Conference for Democratic Action.

Consumers National Federation.

Contemporary Theatre.

Co-ordinating Commission to Lift Embargo (To Spain).

Council for Pan American Democracy.

Cultural and Professional Projects Assn.

Congress of Mexican and Spanish-Mexican Peoples of U.S.

Daily Worker.

Democratic Youth Federation.

Elizabeth Curley Flynn Club.

Elizalde Anti-Discrimination Comm.

Emergency Comm. to Aid Spain.

Emergency Trade Union Conference to Aid Spanish Democracy.

Ex Combattanti Society.

Farmer Labor Party.

Federation of Architects, Engineers, Chemists and Technicians.

Field Workers School.

First Congress of Mexican and Spanish-American Peoples of U.S.

Friends of Soviet Russia.
Friends of Soviet Union.
German-American Bund.
Greater New York Emergency Conference on Inalienable Rights.
Harry Bridges Defense Comm.
Hold the Price Line Comm.
Hollywood Anti Nazi League.
Hollywood Cultural Commission.
Hollywood Community Radio Group.
Hollywood Independent Citizens Comm. of Arts, Sciences and Professions.
Hollywood League for Democratic Action.
Hollywood Theatre Alliance.
Hollywood Writers Mobilization.
Humanist Society of Friends.
Independent Citizens Comm. of Arts, Sciences and Professions.
International Labor Defense.
International Red Aid.
International Workers Order.
Jewish Peoples Committee.
John Reed Clubs.
Joint Committee for Trade Union Rights.
Joint Anti-Fascists Refugee Committee.
League Against War and Fascism.
League for Democratic Action.
League for Peace and Democracy.

League for American Writers.

League for Struggle for Negro Rights.

League of Women Shoppers.

League to Save America First.

Los Angeles County Political Commission.

Los Angeles County Trade Union Commission.

Mooney Defense Commission.

Marine Cooks and Stewards Union.

Maritime Federation of the Pacific.

Mobilization for Democracy.

Motion Picture Cooperative Buyers Guild.

Motion Picture Democratic Committee.

National Citizens Political Action Committee.

National Committee to Abolish the Poll Tax.

National Council on Soviet American Friendship.

National Emergency Conference.

National Federation for Constitutional Liberties.

National Negro Women's Council.

National Negro Congress.

National Students League.

New Masses.

New Theatre League.

North American Commission to Aid Spanish Democracy.

Pen and Hammer Club.

Peoples Council of America.

Peoples Front.

Progressive Comm. To Rebuild the American Labor Party.

Refugee Scholarship and Peace Comm.

Second Annual California Model Legislature.

Simon J. Lubin Society.

Social Problems Club.

Spanish Relief Committee.

Student Rights Assn.

United Farmers League.

United Federal Workers.

Western Workers.

Workers Alliance.

World Committee Against War.

Workers School.

Young Communist League.

The Young Pioneers.

No. 470 MISC.

FILED

MAY 20 1953

HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT

OF THE

United States

October Term, 1952

RICHARD W. PETHERBRIDGE,

Petitioner,

v.

COUNTY OF LOS ANGELES, CHARLES C. MACK, G. H. NEWLAND and T. J. O'KEEFE, and each of them, as members of the Los Angeles County Civil Service Commission; CLIFFORD AMSDEN, as Secretary and Chief Examiner of said Commission; WILLIAM A. SMITH, LEONARD J. ROACH, JOHN ANSON FORD and ROGER W. JESSUP, and each of them, as members of the Los Angeles County Board of Supervisors; WAYNE ALLEN, as Chief Administrative Officer of said County; HAROLD W. KENNEDY, as County Counsel of said County; EUGENE W. BISCAILUZ, as Sheriff of said County; BENJAMIN S. HITE, as Registrar of Voters of said County; ARTHUR J. WILL, as Superintendent of Charities of said County; KATHRYN MOUNTFORD, as Superintendent of the Telephone Department of said County and DAVID BOGEN, as Executive Secretary of the County Probation Committee of said County.

Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

HAROLD W. KENNEDY, County Counsel
and
GERALD G. KELLY, Assistant County Counsel
and
JAMES W. GOODMAN, Deputy County Counsel
1100 Hall of Records,
Los Angeles 12, California
Attorneys for Respondents.

TOPICAL INDEX

Page

I. Petitioner's Reasons For Requesting This Writ Are Not Substantial and Are Based Upon Misstatements of Fact 2

II. The Decision of The California Supreme Court in Hirschman v. County of Los Angeles, et al., *Is Not in Conflict With The Decision of The Supreme Court of The United States in The Case of Wieman v. Updegraff, 97 L. Ed. Adv. Ops. 162 4

III. The Oath Required By The Board of Supervisors of The County of Los Angeles of Its County Employees Did Not Violate Article I, Section 10(1) of The United States Constitution 14

A. The Los Angeles County Loyalty Oath and Affidavit does not constitute a bill of attainder. 14

B. The oath required by the Board of Supervisors does not constitute an ex post facto law 15

Conclusion 18

TABLE OF CASES AND AUTHORITIES CITED

Cases

Page

Adler v. Board of Education (1952), 342 U. S. 485, 96 L. Ed. 517 ..... 4, 8
Calder v. Bull, 3 DAL 386 16
Cummings v. Missouri (1867), 71 U. S. 277, 323, 18 L. Ed. 356 ..... 14, 16, 17
Garner v. Board of Public Works (1951), 341 U. S. 716, 95 L. Ed. 1317 ..... 3, 4, 6, 7, 8, 15, 17, 18
Gerende v. Board of Supervisors (1951), 341 U. S. 56, 95 L. Ed. 745 ..... 4, 9
Hirschman v. County of Los Angeles, 39 Cal. 2d 698 [249 P. 2d 287] (1952) 4, 5, 6, 7, 9, 12, 13, 18
Parker v. County of Los Angeles (1950), 338, U. S. 327, 94 L. Ed. 144 ..... 3, 11
Thompson v. State of Utah, 170 U. S. 343, 351, 42 L. Ed. 1061 15
Wieman v. Updegraff, 97 L. Ed. Adv. Ops. 162 ..... 4, 6, 7, 8, 9, 10, 17

Statute

Feinberg Law 9
United States Constitution, Article I, Section 10(1) 14

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Respondents.

No.....

ANSWER TO PETITION FOR WRIT OF CERTIORARI

I.

PETITIONER'S REASONS FOR REQUESTING THIS WRIT ARE NOT SUBSTANTIAL AND ARE BASED UPON MISSTATEMENTS OF FACT.

Petitioner infers that this petition should be granted because the rights of all of the thousands of public employees of Los Angeles County are at stake. (Petition, page 9).

Actually, there are only sixteen employees in Los Angeles County who were discharged for refusal to take the oath required by the order of the Los Angeles County Board of Supervisors. Every other one of the several thousand County employees executed the Los Angeles County oath and not one was discharged for the information provided in the oath.

In California, the State has now occupied the loyalty oath field. Employees in counties and cities are now required to take the general statewide loyalty oath instead of a local oath of which the Los Angeles County oath was one.

It is further inferred in this petition for certiorari that the Court should consider it because the petitioners were discharged because they refused to disclose what newspapers or magazines they read or religion they adhered to (Petition, page 9). This is a positive misstatement of fact. The only reason that the petitioners were discharged was because they refused to execute

Paragraph "B" of the oath which required them to affirmatively state their membership by name, based upon their own knowledge, in any organization which advocated the overthrow of the government by force and violence.

Petitioner further infers that the same important considerations which caused this Court to grant certiorari in *Parker v. County of Los Angeles* (1950), 338 U. S. 327, 94 L. Ed. 144, are still present here (Petition, page 9). This is not the fact. In *Parker v. County of Los Angeles,* the entire loyalty oath program was under attack, including Paragraph "D" of the Los Angeles County oath which did require the indication of membership in certain listed organizations. This requirement is not in issue in this litigation.

The only issue is the validity of Paragraph "B" which requires an affirmative listing (not a general negation) of organizations which the affiant knows are subversive and knows that he is a member. This type of affidavit requirement was approved by the Supreme Court of the United States in passing upon the *affidavit* requirement in *Garner v. Board of Public Works* (1951), 341 U. S. 716, 95 L. Ed. 1317.

II.

THE DECISION OF THE CALIFORNIA SUPREME COURT IN HIRSCHMAN v. COUNTY OF LOS ANGELES, ET AL.,* IS NOT IN CONFLICT WITH THE DECISION OF THE SUPREME COURT OF THE UNITED STATES IN THE CASE OF WIEMAN v. UPDEGRAFF, 97 L. Ed. Adv. Ops. 162.

The Supreme Court of the United States in *Wieman v. Updegraff* had before it an oath, which, as construed, meant that employees were disqualified from taking the oath if they had formerly been members of any subversive organization regardless of whether or not they knew of its subversive character at the time of membership, and the effect of ineligibility to take the oath was disqualification from public employment. The Supreme Court declared, at page 166:

> "We are thus brought to the question touched on in *Garner, Adler,* and *Gerende*: whether the due process clause permits a state in attempting to bar disloyal individuals from its employ to exclude persons solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they have belonged. *For under the statute before us, the fact of membership alone disqualifies.*" (Emphasis added).

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*Petitioner designates his Petition for Writ of Certiorari as *Richard W. Petherbridge v. County of Los Angeles et al.*; this case in the California Supreme Court was entitled *Hirschman v. County of Los Angeles* and is so cited in 39 Cal. 2d 698 [249 P. 2d 287] (1952).

This is not the situation before the Court in the present petition for certiorari.

Under the provisions of the orders of the Board of Supervisors of the County of Los Angeles, *membership in any organization is not and never has been a ground of disqualification for public employment.*

The petitioners in the *Hirschman* case were discharged because they refused to execute the oath required by the Board of Supervisors of the County of Los Angeles.*

Petitioners were not disqualified from taking the loyalty oath required by the orders of the Board of

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*The Los Angeles County Loyalty Oath and Affidavit reads as follows:

OATH AND AFFIDAVIT

A. OATH OF OFFICE OR EMPLOYMENT

I, (PRINT your name carefully).....
do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment for which I am applying. SO HELP ME GOD.

B. AFFIDAVIT RE SUBVERSIVE ACTIVITY

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the overthrow of the Government of the United States or State of California, or County of Los Angeles, by force or violence except those specified as follows:.....
(the organizations here to be listed embrace all organizations advocating the overthrow of government by force or violence including any of the hereinafter named if they should ever be determined by a court of law to advocate the overthrow of government by force or violence); and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. AFFIDAVIT RE ALIASES

I do further swear (or affirm) that I have never used or been known by any names other than the above, except as follows: (Give maiden name, if any; pen name; stage name, etc.).....

Also included in the document is Paragraph "D", entitled "Membership in Organizations," requiring such officers and employees to indicate whether they have ever been a member of or supported any of some 142 named organizations.

Supervisors because they were members of any organization, nor would they have been discharged from their employment if they did execute the oath and indicate membership in an organization.

It is therefore clearly apparent that the decision of the California Supreme Court in *Hirschman v. County of Los Angeles* does not fall within the purview of the United States Supreme Court's decision in *Wieman v. Updegraff*. The case at bar does, however, fall within the narrow scope of that portion of the decision of the United States Supreme Court in *Garner v. Board of Public Works* (1951), 341 U. S. 716, 95 L. Ed. 1317, in which the City of Los Angeles affidavit requirement was approved. Therein, at 341 U. S. 720, this Court declared:

> "The affidavit raises the issue whether the City of Los Angeles is constitutionally forbidden to require that its employees disclose their past or present membership in the Communist Party or the Communist Political Association. *Not before us is the question whether the city may determine that an employee's disclosure of such political affiliation justifies his discharge.*" (Emphasis added).

The Court in the *Garner* case in construing the *affidavit* clearly *held that employees could be required to list subversive organizations of which they were or had been members.* In the quote above we have added emphasis to the situation which most clearly applies here. Not before the Court in this petition for cer-

tiorari is the question whether the County may determine that an employee's disclosure in the oath or affidavit justifies his discharge.

Emphasis is added to the conclusion that the oath requirement of the petitioners in the *Hirschman* case does not fall within the bar of *Wieman v. Updegraff, supra,* by an examination of *Garner v. Board of Public Works* (1951), 341 U. S. 716, 95 L. Ed. 1317; *Adler v. Board of Education* (1952), 342 U. S. 485, 96 L. Ed. 517; and *Gerende v. Board of Supervisors* (1951), 341 U. S. 56, 95 L. Ed. 745.

Garner involved, in addition to the review of an affidavit requirement which we have heretofore discussed, a Los Angeles City ordinance requiring all city employees to execute an *oath* that they did not belong to organizations which advocated the overthrow of the government by force and violence and had not belonged to such organizations during the preceding five (5) years. The question arose as to whether an employee who had formerly belonged to a subversive organization but was innocent of its purpose could take the *oath,* and the Court was thus presented with a question of scienter. The Court construed the *oath* and found no legislative intent that employees who had innocently been members of subversive organizations were disqualified from taking the *oath.* Obviously, if past innocent membership in such an organization did disqualify, he could not execute the *oath* and therefore would be discharged from his employment; and as discharge would so result, the problem of scienter was

clearly before the Court. In this regard, the Court declared:

> "We have no reason to suppose that the *oath* is or will be construed by the City of Los Angeles or by California courts as affecting adversely those persons who during their affiliation with a proscribed organization was innocent of its purpose, or those who severed their relations with any such organization when the character became apparent, or those who were affiliated with organizations which at one time or another during the period covered by the ordinance were engaged in proscribed activity but not at the time of affiants' affiliation." (Emphasis added).

The Court in construing the oath (*not the affidavit*) in the *Garner* case, as in the oath in the *Updegraff* case, was presented with the problem of scienter. In the instant case, as in the *affidavit* in the *Garner* case, no problem of scienter is involved since membership in any subversive organization with or without knowledge of a subversive purpose does not disqualify an employee from taking the oath or continuing employment. Petitioner would not be prevented from taking the oath because of membership. She would merely indicate membership. The point is further emphasized by reference to *Adler v. Board of Education*, 342 U. S. 485, 96 L. Ed. 517 (1952). Therein, the statute established that membership in an organization which advocated the overthrow of the government by force and violence shall constitute prima facie evidence of

disqualification. Because the statute authorized discharge, the element of scienter was involved, and this Court pointed out in *Wieman v. Updegraff*:

> "In upholding this legislation [the Feinberg Law], we expressly noted that the New York courts had construed the statute to require knowledge of organizational purpose. . . ."

before the discharge could be effected.

In *Gerende v. Board of Supervisors* (1951), 341 U. S. 56, 95 L. Ed. 745, the Supreme Court approved an oath which if not taken would bar a candidate from the ballot. In approving such an oath which would bar a candidate from the ballot, the Supreme Court indicated that it was assuming that the oath would be construed as a requirement that the affiant declare that he was not a person who was engaged " 'in one way or another in the attempt to overthrow the government *by force or violence,*' and that he is not knowingly a member of an organization engaged in such an attempt." So where it was necessary for the affiant to negate membership, knowledge was inferred.

In the instant situation, the execution of the oath does not constitute a bar to employment; and furthermore the individual does not negate membership but expressly lists membership and can only affirmatively list membership if he knew of his membership, and therefore the oath requirement in the *Hirschman* case before this court in this petition for certiorari is completely consistent with the prior pronouncements of the United States Supreme Court.

So far as an opportunity to take the oath after judicial interpretation is concerned, the case of *Wieman v. Updegraff* is limited to the situation where a question of interpretation is involved. No question of interpretation is presented here. It is clear from the oath before the court that the organizations to be listed are only those known by the affiant to be subversive. The language of the oath is also clear that affiliations, innocent or otherwise, do not prevent an employee from taking the loyalty oath nor disqualify him from public employment. It is only where an employee might be discharged because of innocent membership in a subversive organization and the language of the oath is ambiguous as to whether such a person is qualified to take an oath and continue in employment and thus requires interpretation, that the individual's due process would be denied if he were not given an opportunity to take the oath as construed. In the instant case, the construction which the Supreme Court of the State of California placed upon the oath was an obvious construction that existed from the outset and constituted no change in the clear language of the statute. Due process does not mean that every time an oath is interpreted by a court, the employees in question must be given an opportunity to retake the oath as so interpreted.

The Los Angeles County Loyalty oath as required by the Board of Supervisors (see footnote, page 5, *supra)* does not require that an individual declare that he has never been a member of an organization that

advocates the overthrow of the government by force and violence.

In this particular, the recital of facts in the decision of the Supreme Court in *Parker v. County of Los Angeles,* 338 U. S. 327, 94 L. Ed. 144, is in error. Therein, the Supreme Court declared:

> "By Part 'B' he forswears that since December 7, 1941, he has been a member of any organization advocating the forceful overthrow of the government of the United States. . . ."

It was probably this erroneous concept which induced the Supreme Court to grant certiorari in *Parker v. County of Los Angeles.* It has been heretofore established that no County employee is required by the action of the Board of Supervisors to declare that he has never been a member of any organization. The only thing required by the Board Order in Paragraph "B" is that the employee list organizations of which he was a member upon the date that he executed the oath and affidavit.

He further was required to list organizations that he had been a member of since December 7, 1941, which he knew advocated the overthrow of the government by force and violence. Obviously, this does not constitute a negation of membership. He could not list such organizations unless he knew that he was a member of the organization on the date that he executed the affidavit and knew that the organization advocated the overthrow of the government by force and violence.

This oath does not require negation on behalf of the employee but an express declaration that he was a member of the organization (and indicate the name of the organization) that advocated the overthrow of the government by force and violence. In view of this obvious intent, the only interpretation which could have been given to this section was that which it had from its outset as expressed in the Supreme Court of the State of California decision in *Hirschman v. County of Los Angeles,* 39 Cal. 2d 698 [249 P. 2d 287], at page 702, wherein the Court declared:

> "The quoted language, when properly construed, required plaintiffs to designate only those of the named organizations which they knew advocated overthrow of the government by force, or which to their knowledge had been held by a court to advocate such action."

Petitioners contended (Petition, page 16, line 12) to the Supreme Court of the State of California that the County oath and affidavit as the Court had construed it was a different affidavit from that which petitioners had, for valid constitutional reasons, refused to sign. The Supreme Court of the State of California denied the petition for rehearing for the obvious reason that nothing was clarified, changed or added by interpretation, but the court had merely construed the oath in a manner which was obvious from the outset.

Petitioners make the argument that Paragraph "B" required the County employees to speculate upon

what the courts might decide in the future. This contention has no support in fact. In Paragraph "D", which is not before this court in this petition for certiorari, an employee was required to indicate membership in certain listed organizations. In Paragraph "B", a County employee was required to list membership in *any* organization which "advocates the overthrow of the government by force or violence." So that there would be no confusion in the employee's mind, he was told in the next sentence that even though he had listed certain organizations in Paragraph "D", which paragraph included some 142 organizations which did not necessarily advocate the overthrow of the government by force and violence, that nevertheless he must, if he knew of his own knowledge that such an organization advocated the overthrow of the government by force and violence, or that a court had at the time that he executed the oath and affidavit found that such an organization advocated the overthrow of the government by force and violence, name that organization in Paragraph "B".

As declared by the Supreme Court of the State of California in *Hirschman v. County of Los Angeles, supra,* 39 Cal. 2d 698, at page 702:

> "The quoted language, when properly construed, required plaintiffs to designate only those of the named organizations which they knew advocated overthrow of the government by force, or which to their knowledge had been held by a court to advocate such action. They were not required

to speculate upon what the courts might determine in the future."

III.

THE OATH REQUIRED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES OF ITS COUNTY EMPLOYEES DID NOT VIOLATE ARTICLE I, SECTION 10 (1) OF THE UNITED STATES CONSTITUTION.

This section provides in pertinent part:

> "No state shall . . .; pass any bill of attainder, ex post facto law, . . ."

A. The Los Angeles County Loyalty Oath and Affidavit does not constitute a bill of attainder.

A bill of attainder is defined in the case of *Cummings v. Missouri* (1867), 71 U. S. 277, 323, 18 L. Ed. 356, as:

> "A bill of attainder is a legislative act, which inflicts punishment without a judicial trial."

The Los Angeles County Loyalty Oath does not prescribe any punishment as a result of the execution of the oath. No punishment whatsoever is prescribed for any past act. Furthermore, any employee of the County could have advocated the overthrow of the government by force and violence up to the day before he executed the oath and not be barred from taking the oath.

Furthermore, any employee of a public agency could have knowingly belonged to an organization which he knew advocated the forceful overthrow of the government and so indicated in the oath and still continued his employment. This oath constituted no more than the inquiry contained in the affidavit provision sustained by this Court in *Garner v. Board of Public Works, supra.*

We are here only concerned with *qualifications* for public employment and not *punishment* for any offense.

Further, if any doubt remains as to whether or not the oath required by the order of the Los Angeles County Board of Supervisors constitutes a bill of attainder, it is completely dispelled by the fact that there can be no discharge even for failure to take the oath without full opportunity by any public employee to have the matter reviewed by a judicial hearing before the Civil Service Commission. In this instance we therefore have no bill of attainder because

1. There is no discharge whatsoever because of past membership or past advocacy, and

2. There can be no discharge for failure to take the oath without a judicial hearing.

B. The oath required by the Board of Supervisors does not constitute an ex post facto law.

In *Thompson v. State of Utah,* 170 U. S. 343, 351, 42 L. Ed. 1061, the Court said that a penal statute is an *ex post facto* law ". . . which by its necessary oper-

ation and 'in its relation to the offense, or its consequences, alters the situation of the accused to his disadvantage.'" It was decided at an early date that the phrase *"ex post facto"* applied only to retrospective criminal statutes. *Calder v. Bull,* 3 D A L 386.

In *Cummings v. Missouri,* 71 U. S. 277, 326, 18 L. Ed. 356, it is stated:

> "By an *ex post facto* law is meant one which imposes a punishment for an act which is not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required."

Again, we are only concerned with qualifications for public employment and not punishment for any offense.

As no punishment whatsoever is prescribed for either past advocacy of the overthrow of the government by force or violence or past membership in an organization which so advocates, the Los Angeles County Loyalty Oath and Affidavit does not constitute an ex post facto law.

This oath is worded in such a manner that a public employee could execute the oath even though he had formerly advocated the forceful overthrow of the government and even though he had formerly been a member of such an organization that so advocated. No public employee was barred from executing the oath

because of any past act. This distinction in fact controls the application of the cases. The principles of the *Cummings, Garland,* and *Lovett* cases do not apply to this factual situation.

Petitioners cite as authority for this point the following language from this Court's decision in *Wieman v. Updegraff:*

> "We assumed in *Garner,* that if our interpretation of the oath as containing an implicit scienter requirement was correct, Los Angeles would give the petitioners who had refused to sign the oath an opportunity to take it as interpreted and resume their employment. But here, with our decision in *Garner* before it, the Oklahoma Supreme Court refused to extend to appellants an opportunity to take the oath. . . ."

This assumption set forth in *Garner* and reiterated in *Wieman v. Updegraff,* related solely to the *oath* provision in the *Garner* case which required the employee taking the oath to negate under oath membership during the past five years in an organization which advocated the overthrow of the government by force and violence, and the Supreme Court of the United States in using the above-quoted language in *Wieman v. Updegraff* in referring to *Garner,* specifically set forth that the interpretation of scienter in the oath requirement would give the petitioners who had refused to sign the oath an opportunity to take it as interpreted. *No such observation was made as to the affidavit.*

The oath and affidavit required by the Board of Supervisors in the *Hirschman* case goes no further than did the affidavit requirement in the *Garner* case, as the oath and affidavit in the *Hirschman* case merely required as to organizations a listing of membership, nothing more, and the affidavit in the *Garner* case required an indication of membership in named organizations. There was no bar in the affidavit requirement of the *Garner* case if the individual did indicate he was a member and there is no bar to further County employment in the *Hirschman* case if an individual indicates that he was a member of any organization which he chooses to list in Paragraph "B".

CONCLUSION

WHEREFORE, respondents pray that the petition for writ of certiorari to the Supreme Court of the State of California be denied.

Respectfully submitted,

HAROLD W. KENNEDY, County Counsel
GERALD G. KELLY, Assistant County Counsel
JAMES W. GOODMAN, Deputy County Counsel.